

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended, and in light of the following discussion, is respectfully requested.

Claims 1-25 are pending in this application, Claims 1 and 12 having been presently amended. Support for amended Claims 1 and 12 can be found, for example, in the original claims, drawings, and specification as originally filed. No new matter has been added.

In the outstanding Office Action, Claims 1 and 12 were rejected under 35 U.S.C. § 101; and Claims 1, 10, 12, 13, and 19 were rejected under nonstatutory obviousness-type double patenting.

Applicants acknowledge with appreciation the courtesy of Examiner Ahmed for discussing this case with Applicant's representative on September 16, 2009, during which time the Examiner explained that even though he indicated on June 29, 2009 that this case would be allowed, a related applications search found a double patenting issue. The Examiner recommended that a terminal disclaimer be filed to overcome this issue. With respect to the rejection under 35 U.S.C. § 101, the Examiner stated that the amendments discussed regarding Claims 1 and 10 on June 29, 2009 (that were going to be entered via an Examiner's Amendment) should be made in response to the outstanding Office Action to overcome this issue.

Consequently, in response to the rejection under 35 U.S.C. § 101, Applicant has amended Claims 1 and 10 as previously discussed with the Examiner on June 29, 2009. Accordingly, Applicant respectfully submits that the rejection under 35 U.S.C. § 101 has been overcome.

With regard to the non-statutory double patenting rejections of Claims 1, 10, 12, 13, and 19 in view of Claims 16, 17, and 19 of U.S. Application No. 10/717,457, this rejection is respectfully traversed in light of the terminal disclaimer submitted herewith.

The filing of a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection. The "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). Accordingly, Applicant filing the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

Consequently, in view of the present amendment, and in light of the above discussion, the pending claims as presented herewith are believed to be in condition for formal allowance, and an early and favorable action to that effect is respectfully requested.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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